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## JOSEPH PAULUS LANTIP

v.

## LIAN KEE CHU & ORS

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COURT OF APPEAL, PUTRAJAYA
LOW HOP BING JCA
ABDUL WAHAB PATAIL JCA
DAVID WONG DAK WAH J
[CIVIL APPEAL NO: S-02-136-2008]

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9 JUNE 2011

***NATIVE LAW AND CUSTOM:*** *Land dispute - Dealings of native titles - First defendant's status as a native established by a certificate obtained from Sabah Native Court - Whether there was no challenge to validity of certificate - Whether dealings in contravention of ss. 17(1) and 64(1) Sabah Land Ordinance*

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The appellant ('plaintiff') herein appealed against the decision of the High Court dismissing the plaintiff's claim for injunctive reliefs, declaratory orders and specific performance of the sale and purchase agreements executed between him and 372 others. Briefly, the facts were that the first respondent (the first defendant), *vide* sale and purchase agreements, had paid a total sum of RM60,000 for the purchase of 372 lots in the Lingkabau Forest Reserve (collectively 'the land') approved by the Sabah State Government pursuant to the application of 372 applicants. The first defendant's status as a native was evidenced by a certificate obtained from the Sabah Native Court. When the plaintiff approached the applicants and offered to buy their land, the first defendant agreed to repudiate the sale and purchase agreements which he had executed with the applicants, on condition that the applicants refund the sum of RM60,000 to the first defendant. The plaintiff and the applicants executed fresh sale and purchase agreements, powers of attorney and memoranda of transfer in escrow in favour of the plaintiff. However, the plaintiff did not refund the sum of RM60,000 to the first defendant as agreed. As the plaintiff did not fulfil his obligations under the sale and purchase agreements, the applicants pressed the plaintiff for the issuance of the land titles for registration in their names, as they were in need of the payments due and payable under the sale and purchase agreements. Thereafter, the applicants executed new sale and purchase agreements in favour of the first defendant.

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The first defendant then carried out the survey of the land, obtained the issuance of the land titles and registered them in the names of the applicants. The core issue that was raised was where the first defendant's status as a native of Sabah had been established by a certificate obtained from the Sabah Native Court, and there was no challenge to the validity of the said certificate, were the dealings (relating to native titles) between the first defendant and the applicants, and the subsequent dealings between the first defendant and third parties, in contravention of ss. 17(1) and 64(1) of the Sabah Land Ordinance.

**Held (dismissing the appeal)**
**Per Low Hop Bing JCA delivering the judgment of the court:**

**(1)** Sections 17(1) and 64(1) of the Sabah Land Ordinance are clear and unambiguous. They prohibit dealings in land between non-natives and natives in so far as native titles are concerned. Such dealings are null and void. They are also not recognized in any court of law. However, these sections are inapplicable to dealings between natives. (para 19)

**(2)** The certificate of the Sabah Native Court declaring the first defendant as a native of Sabah, in the absence of an appeal against that declaration, was conclusive evidence that the first defendant was a native of Sabah. As it was a final decision, the High Court had correctly accepted it as such. In the circumstances, all dealings between the first defendant and the applicants, and subsequent dealings between the first defendant and third parties were valid in law, being not in contravention of ss. 17(1) and 64(1). (paras 20 & 21)

***Bahasa Malaysia*** *Translation Of Headnotes*

Perayu ('plaintif') merayu terhadap keputusan Mahkamah Tinggi menolak tuntutan plaintif untuk relif-relif injunksi, perintah-perintah deklarasi dan pelaksanaan spesifik perjanjian jual beli yang telah dilaksanakan di antara beliau dan 372 lain. Secara ringkasnya, fakta-fakta adalah responden pertama (defendan pertama), melalui perjanjian jual beli, telah membayar jumlah RM60,000 untuk pembelian 372 lot di Lingkabau Forest Reserve ('tanah-tanah') yang dibenarkan oleh Mahkamah Adat Sabah di bawah permohonan-permohonan 372 pemohon-pemohon. Status defendan pertama sebagai orang asli dibuktikan oleh sijil yang diperolehi dari Mahkamah Adat Sabah. Apabila plaintif mendekati pemohon-pemohon dan menawarkan untuk membeli tanah mereka, defendan

pertama bersetuju untuk menolak perjanjian-perjanjian jual beli yang telah dilaksanakan beliau dengan pemohon-pemohon, atas syarat yang pemohon-pemohon mengembalikan amaun RM60,000 kepada defendan pertama. Plaintif dan pemohon-pemohon melaksanakan perjanjian jual beli yang baru, kuasa-kuasa peguam dan memorandum pindah milik dalam escrow berpihak kepada plaintif. Tetapi, plaintif gagal mengembalikan amaun RM60,000 kepada defendan pertama seperti dipersetujui. Oleh kerana plaintif gagal memenuhi obligasi-obligasi perjanjian-perjanjian jual beli, pemohon-pemohon menekan plaintif untuk pengeluaran hakmilik-hakmilik untuk pendaftaran nama-nama mereka, kerana mereka memerlukan bayaran-bayaran yang sepatutnya dibayar di bawah perjanjian-perjanjian jual beli. Selepas itu, pemohon-pemohon melaksanakan perjanjian-perjanjian jual beli baru yang memihak kepada defendan pertama. Defendan pertama kemudiannya mengendalikan tinjauan tanah itu, memperolehi pengeluaran hakmilik-hakmilik dan mendaftarkan mereka dalam nama pemohon-pemohon. Isu utama yang dibangkitkan adalah di mana status defendan pertama sebagai orang asli Sabah telah dibuktikan melalui sijil yang diperolehi dari Mahkamah Adat Sabah, dan tidak terdapat bantahan terhadap kesahihan sijil tersebut, adakah urusan-urusan (yang berkaitan dengan hakmilik orang asli) di antara defendan pertama dan pemohon-pemohon, dan urusan-urusan seterusnya di antara defendan pertama dan pihak-pihak ketiga, dalam perlanggaran ss. 17 dan 64(1) Ordinan Tanah Sabah.

**Diputuskan (menolak rayuan)**

**Oleh Low Hop Bing HMR menyampaikan penghakiman mahkamah:**

**(1)** Seksyen 17(1) dan 64(1) Ordinan Tanah Sabah adalah jelas. Kedua-duanya melarang urusan-urusan tanah di antara kaum bukan asli dan kaum asli berkaitan dengan hakmilik orang asli. Urusan-urusan seperti itu adalah batal dan tak sah. Mereka tidak diiktirafkan di dalam mana-mana mahkamah undang-undang. Bagaimanapun, seksyen-seksyen ini tidak digunapakai di dalam urusan-urusan di antara kaum asli-kaum asli.

**(2)** Sijil Mahkamah Adat Sabah yang mendeklarasikan defendan pertama sebagai orang asli Sabah, dalam ketidakhadiran rayuan terhadap deklarasi, adalah keterangan muktamad bahawa defendan pertama adalah orang asli Sabah. Oleh kerana ia adalah keputusan muktamad, Mahkamah Tinggi telah

menerimanya dengan betul. Dalam keadaan itu, segala urusan -urusan di antara defendan pertama dan pemohon-pemohon, dan urusan-urusan seterusnya dengan pihak ketiga, adalah sah dari segi undang-undang, kerana ia tidak melanggar ss. 17(1) dan 64(1).

**Case(s) referred to:**
*Datuk Syed Kechik Syed Mohamed v. Government of Malaysia & Anor [1978] 1 LNS 44 FC* ***(refd)***

**Legislation referred to:**
Land Ordinance (Cap 68) (Sabah), ss. 17(1), 64(1)

*For the appellant - Ansari Abdullah; M/s Ansari & Co*
*For the respondent - Edwin Tsen; M/s Tan Pang Tsen & Co*

*[Appeal from High Court, Sandakan; Civil Suit Nos: S-22-45-2001 & S-22-46-2001]*

*Reported by Suhainah Wahiduddin*

## JUDGMENT

**Low Hop Bing JCA:**

### Appeal

**[1]** In Sandakan High Court Suit No. S22-45-2001 (the first suit) and Suit S22-46-2001 (the second suit), the learned trial judge had dismissed the appellant's (the plaintiff's) claim for injunctive reliefs, declaratory orders and specific performance of the sale and purchase agreements executed between him and 372 others. This is the plaintiff's appeal against the decision of the High Court.

### The Two Suits

**[2]** The first suit was against deceased applicants, while the second suit was against applicants who are alive. In both these suits, the plaintiff managed to serve the writ on only 61 defendants. The plaintiff had abandoned his claim against the unserved defendants.

**[3]** Pending full hearing of the two suits, the plaintiff sought but failed to obtain an injunction to restrain the defendants from, *inter alia*, dealing with the land. The plaintiff did not appeal against that decision.

**[4]** The plaintiff had applied but failed to join Foo Choo (Sabah) Sdn Bhd (Foo Choo) as a party. There was also no appeal against that decision.

## Finding Of Facts

**[5]** After a full trial, the learned judge's finding of facts may be unfolded in the following narrative.

**[6]** *Vide* sale and purchase agreements dated 17 December 1994, the first respondent (the first defendant) had paid a total sum of RM60,000 for the purchase of 372 lots in the Lingkabau Forest Reserve (collectively, "the land") approved by the Sabah State Government pursuant to the application of 372 applicants. The applicants as vendors also executed powers of attorney in favour of the first defendant to enable the latter to deal with the land.

**[7]** The first defendant's status as a native was evidenced by a certificate obtained from the Sabah Native Court. The plaintiff did not challenge the validity of the certificate.

**[8]** When the plaintiff subsequently approached the applicants and offered to buy their land, the first defendant agreed to repudiate the sale and purchase agreements which he had executed with the applicants, on condition that the applicants refund the sum of RM60,000 to the first defendant. This was conveyed to the plaintiff who agreed to the refund.

**[9]** The plaintiff and the applicants (including the respective relevant administrators/administratrixes of the deceased applicants) executed fresh sale and purchase agreements, powers of attorney and memoranda of transfer in escrow in favour of the plaintiff between April 1997 and October 1998. However, the plaintiff did not refund the sum of RM60,000 to the first defendant as agreed.

**[10]** Upon execution of the sale and purchase agreements with the applicants, the plaintiff paid RM200 to each of the applicants. Under these agreements, the plaintiff was to pay 50% of the purchase price to the applicants upon completion of the survey, and the balance thereof upon issuance of the land titles which the plaintiff has agreed to obtain. Time was expressed to be the essence thereof.

**[11]** As the plaintiff did not fulfil his obligations under the sale and purchase agreements, the applicants pressed the plaintiff for the issuance of the land titles for registration in their names, as they were in need of the payments due and payable under the sale and purchase agreements. The applicants then gave the plaintiff an ultimatum to obtain the land titles for registration in their names by June 2000, or else they would resell their land to the first defendant. The plaintiff failed to fulfil the ultimatum.

**[12]** Sometime in September 2000, at a consideration of RM250 per acre, the applicants executed new sale and purchase agreements, powers of attorney and memoranda of transfer in favour of the first defendant. When the plaintiff was informed by the applicants of the new sale and purchase agreements, the plaintiff did not object or prevent the applicants from reselling the land to the first defendant.

**[13]** The first defendant then carried out the survey of the land, obtained the issuance of the land titles and registered them in the names of the applicants sometime in December 2000. The first defendant has paid the full purchase price to all the applicants. Ownership was transferred to the first defendant sometime in January 2001.

**[14]** The first defendant then leased the land to Foo Choo. In 2005, the first defendant sold the land to Wong Kien Ching who leased it to Ria Realti Sdn Bhd and Rasamutu Sdn Bhd.

## Sections 17(1) And 64(1) Of The Sabah Land Ordinance (ss. 17(1) And 64(1))

**[15]** In relation to the first defendant's native status, and the applicants' native titles, plaintiff's learned counsel, Mr Ansari bin Abdullah, complained that the dealings between the first defendant and the applicants are null and void, being in contravention of ss. 17(1) and 64(1). He stressed that the first defendant's subsequent dealings with third parties are equally tainted with illegality.

**[16]** Mr Edwin Tsen submitted for the first defendant that the plaintiff's complaint was baseless.

**[17]** The core question which we must determine in the instant appeal may be formulated as follows:

> Where the first defendant's status as a native of Sabah has been established by a certificate obtained from the Sabah Native Court, and there is no challenge to the validity of the said certificate, are the dealings (relating to native titles) between the first defendant and the applicants, and the subsequent dealings between the first defendant and third parties, in contravention of ss. 17(1) and 64(1) of the Sabah Land Ordinance?

**[18]** Sections 17(1) and 64(1) expressly provide as follows:

> 17(1). Except with the written permission of the minister all dealings in land between **non-natives** on the one hand and natives on the other hand are hereby expressly forbidden and no such dealings shall be valid or shall be recognized in any court of law ... .
>
> ...
>
> 64(1). This Part shall apply only to lands held by natives, and no **non-native** may purchase any land held under this Part, unless in accordance with the terms of section 17, or acquire any interest therein by way of charge or otherwise. (emphasis added)

**[19]** Sections 17(1) and 64(1) are clear and unambiguous. They prohibit dealings in land between non-natives and natives in so far as native titles are concerned. Such dealings are null and void. They are also not recognized in any court of law. However, these sections are inapplicable to dealings between natives.

**[20]** In our view, the certificate of the Sabah Native Court declaring the first defendant as a native of Sabah, in the absence of an appeal against that declaration, is conclusive evidence that the first defendant is a native of Sabah. As it is a final decision, the High Court had correctly accepted it as such: *Datuk Syed Kechik Syed Mohamed v. Government of Malaysia & Anor* [1978] 1 LNS 44; [1979] 2 MLJ 101, FC at pp. 103 and 104 per Suffian LP (as he then was) and at pp. 108 and 109 per Lee Hun Hoe CJ (Borneo) (as he then was).

**[21]** In the circumstances, all dealings between the first defendant and the applicants, and subsequent dealings between the first defendant and third parties are valid in law, being not in contravention of ss. 17(1) and 64(1). Hence, we answer the above core question in the negative.

## Conclusion

**[22]** On the foregoing grounds, we dismiss this appeal and affirm the entire decision of the court below.

**[23]** On the facts of the instant appeal, we make no order as to costs here.

**[24]** Deposit to be refunded to the appellant.